IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12331 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PUSHKAL KARSHANBHAI CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12331 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR AY KOGJIE AGP for Respondent No. 1-3

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 20/05/2003

ORAL JUDGEMENT

#. The petitioner detenu has challenged the order of detention passed by the Commissioner of Police, Surat City dated 17.9.2002 detaining the petitioner by resorting the provision of Subsection 2 of Section 3 of the Prevention of Antisocial Activities Act, 1985 (hereinafter referred as "PASA Act" in short) on several

grounds. The petitioner has annexed the order of detention and the grounds of detention with the material, which were relied upon by the Detaining Authority while passing the detention order. As per the committal order dated 17.9.2002 passed by the Commissioner of Police, Surat City, the petitioner was ordered to be detained at District Jail, Nadiad. The order of detention dated 17.9.2002 was served to the petitioner on 9.11.2002. The Detaining Authority, as found from the grounds of detention, has considered the involvement of the petitioner in four criminal cases registered at Umra Police Station between 6.9.2001 to 17.3.2002 and the offence was registered for the offence under Section 379 of the IPC. The petitioner accused in the said cases was arrested by the police on 14th April, 2002, 15th April, 2002, 16th April, 2002 and 16th April, 2002 in respect of four cases registered against him at Umra Police Station. In all the cases, the petitioner was released on bail by the Competent Court and the cases were pending trial before the Competent Court. The Detaining Authority had also relied upon the statements of witnesses recorded by the police in respect of which, the witnesses have highlighted about the prejudicial activities carried out by the petitioner accused and the statements of witnesses were recorded by the police on 27th July, 2002, wherein, the witnesses have highlighted about the prejudicial activities of the petitioner, which has occurred on 18th July, 2002 at 7.00 p.m. within the jurisdiction of Sachin Police Station and due to such prejudicial activities, the public order was disturb. The statements of witnesses were verified by the police on 27th July, 2002, wherein, the witnesses have highlighted about the incident occurred on 18.7.2002 at Sachin Police Station area and as found from the statements, due to prejudicial activities, public order was disturb, the Detaining Authority namely, the Commissioner of Police, Surat City has recorded and verified the statements on 13.9.2002. The Detaining Authority has while considering the material in the form of FIR and the statements of witnesses, recorded satisfaction that petitioner is doing prejudicial activities which has affected the public order and according to the Detaining Authority, the petitioner is a 'dangerous person' as defined under Section 2 (c) of the PASA Act.

#. Mr. Prajapati, learned advocate for the petitioner has while arguing the matter has pressed only one ground that the order of detention be set aside on the ground that there is a delay in passing the order. The petitioner has in ground "S" in the petition has contended that there is a delay in passing the order of

detention. According to the petitioner that the last offence was registered against the petitioner was on 17th March, 2002 being I. CR.No. 116 of 2002 and the order of detention was passed on 17.9.2002, after more than about 6 months. It is also contended that statement of witnesses were recorded by the police on 27th July, 2002 and the same were verified by the Detaining Authority after more than one and half month on 13th September, 2003, thereby, it is the contention that there were no compelling circumstances on the part of detaining authority to take such a drastic step after a lapse of substantial time and therefore, on this ground alone the order of detention is required to be set aside.

#. Mr. Kogjie, learned AGP has supported the order of detention though the Detaining Authority has not filed any affidavit-in-reply dealing with the contentions raised in the petition. It is the submission of Mr. Kogjie that the contentions raised in the petition is not well founded in view of the fact that after the last offence was registered against the petitioner, there was a proposal to detain the petitioner moved by the Sponsoring Authority and as the order of detention was required to be passed, the proposal is required to be moved from the different authority. It is also his submission that as transpires from the statement of witnesses recorded by the police and the said statements were verified by the Detaining Authority on 13th September, 2002, the order of detention was passed immediately on 17.9.2002 and it his submission that it cannot be said that there is a delay in passing the detention order and according to him that no case is made out for setting aside the order of detention.

#. Mr. Prajapati,learned advocate for the petitioner has placed reliance upon the decision in the case of ELESH NANDUBHAI PATEL VS. COMMISSIONER OF POLICE, AHMEDABD CITY AND OTHERS, reported in 1997 (1) GLH p. 381. Dealing with the said case, the court has in term examined the aspect of delay in passing the order. In that case, the court has in para 21 observed as under:-

"para 21 : In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996 i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and

> 10th October, 1996, both unregistered cases. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S.Ramamurthy reported in 1993 (2) Suppli. SCC 61."

In light of above case and considering the present case, admittedly, the Detaining Authority has relied upon a Criminal case registered against the petitioner. The last case, which was registered against the petitioner is dated 17th March, 2002, wherein, the petitioner was arrested by the police on 16th April, 2002 and in the said case, the petitioner was released on bail by the Competent Court. The statements of witnesses were recorded by the police on 27th July, 2002 referring about the incident, which has occurred on 8th July, 2002 and the statement of another witness was recorded on 27th July, 2002 referred to the incident dated 18th July, 2002. Both the statements of witnesses were verified by the Detaining Authority on 13.9.2002. I have perused the statements of the witnesses. In light of the above fact and the incident which is relied upon by the Detaining Authority, in which, the accused was arrested in respect of the offence registered on 17th March, 2002 and the order of detention was passed on 17.9.2002, at least after more than 5 months. No affidavit is filed by the Detaining Authority or State Government explaining delay in passing the order of detention. It is not possible for me to accept the contention of Mr. Kogjie that there is a cogent reasons for passing the order, wherein according to him there is no delay.

#. In light of the above decision and facts of the present case, petition is allowed. The impugned order dated 17.9.2002 passed by the Commissioner of Police, Surat City is quashed and set aside. The detenu Shri Pushkal Karshanbhai Chauhan is ordered to be released forthwith, if not required in any other case. Rule is made absolute accordingly. Direct Service Permitted.

(D.K. Trivedi, J.)

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